

AMENDED IN ASSEMBLY JUNE 25, 2009

AMENDED IN ASSEMBLY JUNE 11, 2009

AMENDED IN SENATE APRIL 23, 2009

SENATE BILL

No. 722

Introduced by Senator Steinberg

February 27, 2009

An act to add Division 25.7 (commencing with Section 38700) to the Health and Safety Code, relating to greenhouse gases.

LEGISLATIVE COUNSEL'S DIGEST

SB 722, as amended, Steinberg. Greenhouse gas credits.

Under existing law, a person or entity that represents that a consumer good that it manufactures or distributes is not harmful to, or is beneficial to, the natural environment, through the use of specified environmental terms, is required to maintain in written form in its records information and documentation supporting the validity of the representation, as specified. Existing law provides that it is unlawful for a person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. A violation of these requirements is a misdemeanor.

This bill would make it unlawful for a person, as defined, to represent in an advertisement or in any other sales or promotional materials made available to the public for the sale of a greenhouse gas credit or emission reduction, that the credit or reduction reduces greenhouse gas emissions unless certain requirements are met. The bill would also require a person that represents in an advertisement or in any sales or promotional materials made available to the public for the sale of a greenhouse gas credit or emission reduction, that the credit or emission reduction results

in a reduction of greenhouse gases to maintain in written form and make available to any member of the public who requests it certain information and documentation supporting the validity of that representation. A violation of these provisions would be punishable by a specified civil penalty and would create a civil cause of action. Reasonable attorney fees and costs would be available for any such action brought. These requirements would become operative on January 1, 2011, and would become inoperative if the Federal Trade Commission adopts binding and enforceable trade rules or regulations for claims or representations for greenhouse gas emission reduction credits or reductions to protect consumers.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 25.7 (commencing with Section 38700)
2 is added to the Health and Safety Code, to read:

3
4 DIVISION 25.7. GREENHOUSE GAS REDUCTION
5 REPRESENTATIONS
6

7 38700. The Legislature finds and declares all of the following:

8 (a) Global warming poses a serious challenge to the world's
9 environment and economy.

10 (b) With increasing concern regarding climate change, there
11 has been an increase in the advertising, sale, and transfer of
12 greenhouse gas emission reduction credits, offsets, and similar
13 products designed to allow individuals or entities, or both, to
14 purchase emission reduction credits to voluntarily offset
15 greenhouse gas emissions from the activities of the purchaser.

16 (c) While voluntary greenhouse gas emission reductions can
17 contribute to efforts to reduce global warming, consumers and
18 other members of the public have few protections or standardized
19 methods by which to ensure that they are purchasing or obtaining
20 emission reduction credits that actually reduce greenhouse gases,
21 reduce global warming, and improve the environment.

22 (d) The purposes of this division are to protect the consumer
23 and to ensure that the benefits to the environment through the sale

1 of legitimate greenhouse gas emission reduction credits, offsets,
2 or similar products are realized.

3 38701. For the purposes of this division, the following terms
4 have the following meanings:

5 (a) “Greenhouse gas credit,” “emission reduction,” “credit,”
6 “offset,” “reduction,” or any similar term, means a voluntary
7 reduction in the emissions of greenhouse gases into the atmosphere
8 undertaken for the purposes of selling, trading, or otherwise
9 providing the credit or emission reduction to another party.

10 (b) “Person” has the same meaning as set forth in subdivision
11 (c) of Section 17577.1 of the Business and Professions Code.

12 38702. It is unlawful for any person to represent in an
13 advertisement or in any other sales or promotional materials made
14 available to the public for the sale of a greenhouse gas credit or
15 emission reduction, that the credit or reduction reduces greenhouse
16 gas emissions unless it meets one or more of the following
17 conditions:

18 ~~(a) The credit or emission reduction meets methodologies that~~
19 ~~have been adopted by the State Air Resources Board as being in~~
20 ~~compliance with Division 25.5 (commencing with Section 38500);~~
21 ~~including, but not limited to, Section 38571.~~

22 *(a) The credit or emission reduction meets methodologies or*
23 *standards that have been adopted or approved by the State Air*
24 *Resources Board pursuant to Division 25.5 (commencing with*
25 *Section 38500).*

26 (b) The credit or emission reduction complies with one or more
27 protocols for voluntary emission reductions of greenhouse gases
28 adopted by the California Climate Action Registry consistent with
29 the requirements in former Chapter 6 (commencing with Section
30 42800) of Part 4 of Division 26, as effective on December 31,
31 2007, and is registered with the California Climate Action Registry.

32 (c) The person demonstrates, and discloses in any advertising
33 or other sales or promotional material made available to the public,
34 that the credit or emission reduction meets all of the following
35 conditions:

36 (1) The credit or emission reduction is quantifiable and
37 measurable in a manner that is consistent with the protocols
38 developed pursuant to the reporting regulations adopted by the
39 State Air Resources Board pursuant to Part 2 (commencing with
40 Section 38530) of Division 25.5.

(2) The credit or emission reduction is surplus, and is in addition to any greenhouse gas emission reduction that otherwise would occur.

(3) The credit or emission reduction is verifiable by a state, regional, or local agency within the State of California.

(4) The credit or emission reduction does not cause or contribute to a violation of any state or federal ambient air quality standard or toxic air contaminant standard.

38703. (a) Any person that represents in an advertisement or in any other sales or promotional materials made available to the public for the sale of a greenhouse gas credit or emission reduction, that the credit or emission reduction results in a reduction in greenhouse gases, shall maintain in written form and make available to any member of the public who requests it all of the following information and documentation supporting the validity of the representation:

(1) The basis for the claim, including documentation that one or more of the conditions required by Section 38702 have been met.

(2) Information on any adverse environmental or public health impacts associated with the creation and maintenance of the credit or emission reduction, including impacts on species, habitat, ecosystems, land use, biodiversity, air quality, water supply and quality, access to food, and production of food.

(b) A retailer that does not initiate a representation by advertising or through other means available to the public shall not be deemed to be in violation of this section.

38704. (a) A violation of this division is punishable by a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation, and by the payment of the cost of the purchase of the credit, offset, or reduction as defined pursuant to subdivision (a) of Section 38701.

(b) A violation of this division creates a civil cause of action that may be brought by any person or governmental entity.

(c) Reasonable attorney fees and costs shall be available for any action brought pursuant to this section.

(d) A violation of this division is not a crime.

(e) The remedies provided in this section are in addition to any other rights or remedies under any other provision of law.

1 38705. This division shall become operative on January 1,
2 2011, and shall become inoperative if the Federal Trade
3 Commission adopts binding and enforceable trade rules or
4 regulations for claims or representations for greenhouse gas
5 emission reduction credits or reductions to protect consumers.

O